IN THE

Supreme Court of the United States

October Term 1970

No. 45 Original

Supreme Court, U.S.
FILED
AUG 5 1970
E. ROBERT SEAVER, CLERK

STATE OF WASHINGTON, STATE OF ILLINOIS,
STATE OF ARIZONA, STATE OF COLORADO,
STATE OF HAWAII, STATE OF IOWA,
STATE OF KANSAS, STATE OF MAINE,
COMMONWEALTH OF MASSACHUSETTS,
STATE OF MINNESOTA, STATE OF MISSOURI,
STATE OF OHIO, STATE OF RHODE ISLAND,
STATE OF VERMONT, AND COMMONWEALTH OF VIRGINIA,
Plaintiffs,

v.

GENERAL MOTORS CORPORATION,
a Delaware corporation,
FORD MOTOR COMPANY,
a Delaware corporation,
CHRYSLER CORPORATION,
a Delaware corporation,
AMERICAN MOTORS CORPORATION,
a Maryland corporation, and
AUTOMOBILE MANUFACTURERS ASSOCIATION,
a New York corporation,
Defendants.

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

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AMERICAN MOTORS CORPORATION,
a Maryland corporation, and
AUTOMOBILE MANUFACTURERS ASSOCIATION,
a New York corporation,
Defendants.

MOTION FOR LEAVE TO FILE COMPLAINT

Each of the above-named Plaintiff States respectfully asks leave of this Court to file the Complaint which is submitted herewith.

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a Maryland corporation, and
AUTOMOBILE MANUFACTURERS ASSOCIATION,
a New York corporation,
Defendants.

COMPLAINT

COUNT I
SHERMAN ACT VIOLATION

Jurisdiction

1. The original jurisdiction of this Court is invoked under the authority of Article III, Section 2 of the Constitution of the United States and 28 U.S.C. §1251(b)(3).

2. This action is brought under 15 U.S.C. §26 commonly referred to as Section 16 of the Clayton Act to restrain the defendants from violating 15 U.S.C. §1, commonly referred to as Section 1 of the Sherman Act, and to obtain mandatory injunctive relief designed to remedy the damage to the property, health, safety, comfort and welfare of the Plaintiff States and their citizens caused by defendants.

3. There is no other suitable forum than the original jurisdiction of the United States Supreme Court in which all Plaintiff States can bring this single action and obtain adequate and timely relief as sought herein or to which this action might be remitted in the interests of convenience, efficiency and justice.

Plaintiffs

4. Each of the herein Plaintiffs is a sovereign state of the United States and has sustained damages as a result of the combination and conspiracy in violation of the antitrust laws herein alleged.

5. Plaintiffs bring this action in their capacity as *parens patriae*, trustee, guardian, quasi-sovereign, representative and protector of the people of their respective states, and as proprietor of state lands, properties, and resources in that they have an obligation to maintain, promote and protect the health and welfare of their respective citizens and the integrity of their domain.

6. The wrong done to the people of the respective states named herein as Plaintiffs as a result of the combination and conspiracy alleged transcends the injury sustained by them individually, and adversely affects the economy and

prosperity of the Plaintiff States and the health and welfare of their citizens.

Defendants

7. Automobile Manufacturers Association, Inc., a corporation organized and existing under the laws of the State of New York with its principal place of business in Detroit, Michigan, is made a defendant herein. Automobile Manufacturers Association, Inc. is a trade association whose membership consists mainly of firms engaged in the business of manufacturing and selling motor vehicles and component parts and accessories thereto in various states of the United States.

8. The corporations named below are made defendants herein. Each of said corporations is organized and exists under the laws of the state indicated and has its principal place of business in the city indicated. Within the period of time covered by this complaint said defendants have primarily engaged in the business of manufacturing and selling motor vehicles in various states of the United States, and also manufacture and sell component parts and accessories thereto.

Defendant Corporation	*State of Incorporation*	*Principal Place of Business*
General Motors Corporation	Delaware	Detroit, Michigan
Ford Motor Company	Delaware	Dearborn, Michigan
Chrysler Corporation	Delaware	Highland Park, Mich.
American Motors Corporation	Maryland	Detroit, Michigan

9. Whenever in this complaint reference is made to any act, deed or transaction of a corporate defendant, such

allegation shall be deemed to mean that said corporation engaged in said act, deed or transaction by or through its officers, directors, agents or employees while they were actively engaged in the management, direction or control of corporate business affairs.

Co-Conspirators

10. Various other persons, firms and corporations not made defendants herein have participated as co-conspirators with the defendants in the offense charged in this complaint and have performed acts and made statements in furtherance thereof.

Definition

11. As used herein, the term "motor vehicle air pollution control equipment" means equipment, or any part thereof, designed for installation on a motor vehicle or any system or engine modification on a motor vehicle which is designed to cause a reduction of pollutants emitted from the vehicle, including, but not limited to, any device for the control of emissions of pollutants from the exhaust system, the crankcase, the carburetor, or the fuel tank.

Trade and Commerce

12. Automobiles for the most part are manufactured in the State of Michigan and are shipped therefrom to each of the fifty states of the United States. Some automobiles are assembled in various states of the United States from parts manufactured in the State of Michigan and other states. In 1966, 78,315,000 passenger cars and 15,864,000 trucks and buses, exclusive of off-the-road vehicles, were registered in the United States. In that year, 8,604,712

passenger cars valued at more than $17.5 billion and 1,791,-587 commercial vehicles valued at more than $3.9 billion were produced in this country. Of the trucks produced, 96,560 were built with diesel motors.

13. Since at least 1952, it has been established that motor vehicles contribute to air pollution by the emission of hydrocarbons, carbon monoxide, oxides of nitrogen and other contaminates.

14. As a result of new and continuing demands that automotive vehicles be equipped with air pollution control devices, a large and growing market for the production and installation of such devices has developed. Motor vehicle air pollution control devices are shipped in interstate commerce, both as original component equipment attached to motor vehicles and as replacements for existing components, from assembly points in various states to the Plaintiff States.

Violations Alleged

15. Beginning at least as early as 1953, and continuing thereafter up to and including the date of this complaint, the defendants and co-conspirators have been engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in motor vehicle air pollution control equipment.

16. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which have been and are:

(a) to eliminate all competition among themselves in the research, development, manufacture and installation of motor vehicle air pollution control equipment; and

(b) to eliminate competition in the purchase of patents and patent rights from other parties covering motor vehicle air pollution control equipment.

17. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators did those things which they combined and conspired to do, including, among other things, the following:

(a) agreed that all industry efforts directed at the research, development, manufacture and installation of motor vehicle air pollution control equipment should be undertaken on a non-competitive basis;

(b) agreed to seek joint appraisal of patents and patent rights submitted to any of them by persons not parties to a cross-licensing agreement entered into on July 1, 1955, and amended and renewed periodically, and agreed to require "most-favored-purchaser" treatment of all parties to the cross-licensing agreement if any one were licensed by a person not a party to that agreement;

(c) agreed to install motor vehicle air pollution control equipment only upon a uniform date determined by agreement, and subsequently agreed on at least three separate occasions to attempt to delay the installation of motor vehicle air pollution control equipment;

(1) In 1961 the defendants agreed among themselves to delay installation of "positive crankcase ventilation" on vehicles for sale outside of California until the model year 1963, despite the fact that this antipollution device could have been installed nationally for the model year 1962 and that at least some automobile manufacturers expressed willingness to do so, in the absence of a contrary industry-wide agreement;

(2) In late 1962 and extending into 1963, the defendants agreed among themselves to delay installation of an improvement to the positive crank-

case ventilation device, an improvement which the California Motor Vehicle Pollution Control Board had indicated it would make mandatory; and

(d) agreed to restrict publicity relating to research and development efforts concerning the motor vehicle air pollution problem.

Effects of Conspiracy

18. The aforesaid combination and conspiracy has had, among other, the following effects:

(a) Hindrance and delay in the research, development, and manufacture—both by the defendants and co-conspirators and by others not parties to the agreements alleged herein—and the installation of motor vehicle air pollution control equipment; and

(b) Restriction and suppression of competition among the defendants and co-conspirators in the research, development, manufacture and installation of motor vehicle air pollution control equipment; and

(c) Restriction and suppression of competition in the purchase of patents and patent rights covering motor vehicle air pollution control equipment.

(d) The level of pollutants emitted into the ambient air by automobiles manufactured following the inception of the conspiracy was, and is, substantially greater than the level which would have been attained but for the aforementioned agreement, combination and conspiracy with the result that the citizens of the Plaintiff States live in an unhealthy environment contaminated by humanly injurious atmospheric pollutants that have inflicted and continue to inflict upon very large numbers of such citizens great physical suffering, and actual physical injury induced or aggravated by such automotive pollutants.

(e) The people of the Plaintiff States have been compelled to expend large but undeterminable sums of monies, in order to control the damaging effects of said air pollution which has caused substantial and

permanent damage to both real and personal property of the Plaintiff States and its citizens.

(f) The aforementioned hindrance and delays due to the restriction and suppression of competition in the research, development, manufacture and installation of pollution control devices have resulted in the continuous introduction of inadequate air pollution control devices as original and replacement equipment on motor vehicles purchased and used within the boundaries of the Plaintiff States and throughout the United States, despite the existence of technical capacity and knowledge sufficient to develop and produce effective air pollution control devices.

(g) The Plaintiff States and the people thereof have been compelled to expend large sums of monies for the purpose of curtailing the effects of pollution and for enforcement of anti-pollution control statutes and ordinances.

(h) All, or substantially all, of the people of the Plaintiff States have been harmed by the defendants as a result of the conspiracy herein described in that they have been subjected to live in an unhealthy environment contaminated by unnatural astmospheric pollutants emitted by motor vehicles manufactured by the defendants.

(i) The full and complete utilization of the wealth of the States has been adversely affected.

(j) Measures taken by the Plaintiff States to promote the general progress and welfare of its people have been frustrated.

(k) Injury and financial damage to the economy and prosperity of the Plaintiff States in, among others, the following ways:

(1) The natural resources of the Plaintiff States including, among others, plant life such as agronomic, forest, watershed and ornamental varieties have been and continue to be significantly damaged, injured and depleted, causing great damage to the ecology of the Plaintiff States.

(2) The citizens of the Plaintiff States have been compelled to live in an unhealthy environment contaminated by humanly injurious atmospheric pollutants that have caused and continue to cause serious, cumulative and permanent impairment to the general health, comfort and welfare of such citizens, to the detriment of the economy and prosperity of the Plaintiff States.

(3) The quality of the air within the States has been and continues to be significantly deteriorated to the detriment of the general economy and prosperity.

(1) The harm and damage done to the Plaintiff States and to their individual citizens cannot be accurately measured or adequately compensated in monetary terms, nor is there any practicable way in which the Plaintiff States could determine the individual money damages suffered by each of their citizens as a result of the above alleged acts of the defendants. Accordingly, Plaintiff States have no adequate remedy at law through a suit for treble damages. The only adequate remedy available to Plaintiff States and to their citizens is through the granting of injunctive relief as prayed for in this complaint.

Fraudulent Concealment

19. Plaintiffs had no knowledge of the aforesaid combination and conspiracy, or of any fact which might have led to the discovery thereof prior to the instituting of proceedings by the United States of America against the defendants herein on January 10, 1969. Plaintiffs could not have discovered the alleged combination and conspiracy at an earlier date by the exercise of due diligence since the combination and conspiracy set forth herein had been fraudulently concealed by defendants by various means and methods used to avoid the detection thereof.

20. By virtue of this fraudulent concealment, Plaintiffs

assert the tolling of any applicable statute or period of limitation affecting Plaintiffs' right of action herein.

COUNT II
COMMON LAW CONSPIRACY

1. Plaintiffs reallege paragraph 1 of Count I as paragraph 1 of this Count.

2. This Count is brought under this Court's general equitable powers granted by Article III, Section 2, of the United States Constitution, independent of the Sherman and Clayton Acts, to eliminate and remedy conspiracies in restraint of trade by the defendants, as recognized at common law, and to obtain mandatory injunctive relief designed to remedy the damage to the property, health, safety, comfort and welfare of the Plaintiff States and their citizens caused by the defendants.

3. There is no other suitable forum than the original jurisdiction of the United States Supreme Court in which all Plaintiff States can bring this single action and obtain adequate and timely relief as sought herein or to which this action might be remitted in the interests of convenience, efficiency and justice.

4. Each of the herein Plaintiffs is a sovereign state of the United States and has sustained damages as a result of the combination and conspiracy in restraint of trade prohibited by the common law as herein alleged.

5. Plaintiffs reallege paragraphs 5 through 20 of Count I as paragraphs 5 through 20 of this Count.

COUNT III

PUBLIC NUISANCE

1-2. Plaintiffs reallege paragraphs 1 and 3 of Count I as paragraphs 1 and 2 of this Count.

Plaintiffs

3. Each of the Plaintiff States brings this action in their quasi-sovereign capacity as proprietor of state lands, properties and resources, and as *parens patriae* to assert a claim independent of and beyond the interests of their individual citizens; each of the Plaintiff States has sovereignty within its borders and as such has dominion over all resources including the air that lies within their domain; concurrent with this power Plaintiff States have an obligation to take such action as may become necessary to assure the protection of such resources, including the air, the contamination of which would interfere with the rights of their respective citizens to live in and enjoy a healthy pollution-free environment.

Defendants

4-5. Plaintiffs reallege paragraphs 8 and 9 of Count I as paragraphs 4 and 5 of this Count.

Offense Charged

6. Motor vehicles manufactured by the defendants have in the past been and presently are so designed that noxious wastes and gases are released into the atmosphere in the course of ordinary operation of said motor vehicles.

7. Motor vehicles manufactured by the defendants and operated on the highways of the United States are responsible for the emission into the atmosphere of the fol-

lowing contaminants: carbon monoxide, oxides of nitrogen, hydro-carbons, lead compounds and other toxic particles.

8. The emissions of contaminants as described above pollute the air and thereby constitute a danger to human health and welfare, in that a direct relationship has been established between the contaminants contained in motor vehicle emissions and chronic respiratory disease, carcinogens, liver and kidney disorders, and a wide variety of tumors.

9. Contaminants emitted by vehicles such as are manufactured by the defendants directly cause severe damage to the flora and fauna of Plaintiff States.

10. The aforesaid emissions which pollute the air as described above have resulted from the design and engineering of the motor vehicles manufactured by defendants and which said defendants have caused to be distributed throughout the United States.

11. The continued manufacture and distribution of motor vehicles as presently engineered and designed which cause the aforesaid unhealthy and dangerous emissions constitute a public nuisance contrary to the public policy of the Plaintiff States, as well as the federal government. 42 U.S.C., §1857(4)(8)

12. The aforesaid injurious, unhealthy and dangerous discharges and emissions are continuing and remain unabated thereby causing irreparable and indeterminate damages to the Plaintiff States and their citizens; thus, the only adequate remedies available to the people of the Plaintiff States for the protection of their health, safety and welfare are those remedies solely existing in a court of equity.

13. There is presently existing or being developed adequate technology to alleviate or avoid the dangers alleged herein.

Prayer for Relief in Respect to All Courts

WHEREFORE, plaintiffs pray:

1. That the Court adjudge and decree that the aforesaid combination and conspiracy, and the acts done in pursuance thereof, were and are in unlawful restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act and in violation of the common law and that the acts alleged in Count III constitute a public nuisance;

2. That a mandatory injunction be issued by this Court requiring the defendants and each of them to adopt and pursue an accelerated program of spending, research and development designed to produce a fully effective pollution control device or devices and/or pollution free engine at the earliest feasible date as shown by the evidence, specifically, if applicable on the evidence, that date by which such device or devices or such pollution free engine would have been developed but for the conspiracy alleged herein;

3. That a mandatory injunction be issued by this Court requiring the defendants to cause to be installed, at defendants' expense, as standard equipment in all new motor vehicles sold, or delivered in the United States such effective anti-pollution control devices as could have been installed in said motor vehicles but for the conspiracy alleged herein;

4. That a mandatory injunction be issued by this Court

requiring the defendants to cause to be installed, at defendants' expense such effective anti-pollution control devices, as the Court deems reasonable and proper, on all motor vehicles owned or possessed by anyone in the United States, manufactured by the defendants during or following the period of the conspiracy alleged herein;

5. That the defendants be enjoined from continuing the combination and conspiracy and nuisance herein alleged, and from entering into any combination, conspiracy, agreement, understanding or concert of action having similar purposes or effects;

6. That the Plaintiffs have such other, further and different relief as the nature of the case may require or to the Court shall seem justified; and

7. That the Plaintiffs respectively recover from the defendants the cost of this suit, together with reasonable attorneys fees as is provided in the federal antitrust laws.

DATED: August 5, 1970.

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PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

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PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

STATEMENT OF GROUNDS ON WHICH ORIGINAL JURISDICTION IS INVOKED

The original jurisdiction of this court is invoked under Article III, §2 of the United States Constitution and 28 U.S.C. §1251 (b)(3) as an original action by the States

of ARIZONA, COLORADO, HAWAII, ILLINOIS, IOWA, KANSAS, MAINE, MASSACHUSETTS, MINNESOTA, MISSOURI, OHIO, RHODE ISLAND, VERMONT, VIRGINIA and WASHINGTON, against the defendants GENERAL MOTORS CORPORATION, FORD MOTOR COMPANY, CHRYSLER CORPORATION, AMERICAN MOTORS CORPORATION and AUTOMOBILE MANUFACTURERS ASSOCIATION, INC., who are all citizens of a State or States different from those States bringing this action as plaintiffs.

Article III, §2 of the United States Constitution states as follows:

> Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—*between a State and Citizens of another State*;—between Citizens of different States;—between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. (Emphasis added)

28 U.S.C. §1251(b)(3) states as follows:

> (b) The Supreme Court shall have original but not exclusive jurisdiction of:
>
> (3) All actions or proceedings by a State against the citizens of another State or against aliens. June 25, 1948, c. 646, 62 Stat. 927.

QUESTION PRESENTED

Should the Supreme Court exercise its original jurisdiction in this case where 15 States, representing 65,900,000[1]

1. Based on 1970 preliminary census figures.

people or over 30% of the total population of the United States, have sued as *parens patriae*, Quasi Sovereigns, and Proprietors, seeking equitable relief against citizens of another State and where there is no other suitable forum in which this case can be tried in the interest of all parties hereto and in the interests of convenience, efficiency and justice?

STATEMENT OF THE CASE

The Plaintiff States as *parens patriae* of their citizens as *quasi* sovereigns, and as proprietors seek injunctive relief including mandatory injunctions on three separate counts. Count I asserts violations of the federal antitrust laws, specifically Section 1 of the Sherman Act, 15 U.S.C. §1, alleging that defendants have conspired, combined and agreed in restraint of trade, to delay and prevent the research, development and installation of effective air pollution control devices for automobiles manufactured and sold by the defendants to the American public. In respect to Count I, Plaintiff States seek injunctive relief under Section 16 of the Clayton Act, 15 U.S.C. §26.

Count II asserts a conspiracy in restraint of trade at common law, alleging as in Count I that defendants have combined, conspired and agreed to delay and prevent the research, development and installation of effective air pollution control devices for automobiles manufactured by them. In respect to Count II, Plaintiff States as *parens patriae* of their citizens request this Court to grant injunctive relief in exercise of its general equity powers, asserting that such States have no remedy at law adequate to protect the health, safety and welfare of their citizens.

Count III asserts that the defendants jointly and severally have caused and maintained a public nuisance in

that said defendants, and each of them, have manufactured and sold automobiles to the American public, which automobiles have in the past and do now discharge harmful pollutants into the air in and over the Plaintiff States, thereby causing irreparable injury and damage to the health, welfare, safety and property of said States and their citizens. In respect to Count III, Plaintiff States, as *parens patriae* of their citizens and as *quasi* sovereigns, request this court to grant such injunctive relief as this Court deems appropriate in the exercise of its general equity powers.

The States which are Plaintiffs in this action represent a total population of 65,900,000 citizens, or over 30 per cent of the population of the United States. Plaintiff States are situated in every geographic region of the United States. Automobiles manufactured and sold by the defendants in every State (including all States not plaintiffs herein) are driven in and through Plaintiff States or emit pollutants which contaminate the air over Plaintiff States. In view of the national scope of the injury alleged in this complaint, the national scope of the conspiracy asserted in Counts I and II, the national magnitude of the nuisance asserted in Count III, and the inadequacy of any injunctive relief which is less than nationwide in its impact and effect, Plaintiff States seek leave to file this action in this Court. Plaintiff States submit that this forum, in the interests of convenience, efficiency and justice, can provide the only unified trial of the facts alleged as well as grant the nationwide injunctive relief requested in the event that Plaintiff States prevail.

In addition, in view of the injunctive relief sought by

Plaintiffs, as spelled out more particularly below, a speedy *final*[2] adjudication is absolutely essential in order to remedy the substantial loss and damage and the irreparable injury caused by the wrongful acts of defendants alleged herein.

Relief delayed as a result of following the normal appellate processes may well be relief denied.

ARGUMENT

I.

Plaintiff States Have a Right to Sue as *Parens Patriae*, Quasi Sovereigns and Proprietors

Each of the Plaintiff States brings this action as *parens patriae* on behalf of its citizens, as *quasi* sovereign of its interests in the air within its domain, and as proprietor of its lands and property, all of which have been damaged by the acts of the defendants alleged in the complaint. *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439 (1945). The impact of air pollution from automobile emissions upon the health and welfare of the citizens of the several States and its impact upon interests of the States themselves are well known facts which have been pleaded with specificity in the complaint and which Plaintiffs will prove at the trial.

That such an action may be maintained by a State on behalf of her citizens is beyond serious dispute. In the original action of *Missouri v. Illinois & Chicago District*, 180 U.S. 208 (1901), this Court was faced with the contention that the State of Missouri was not the proper party to seek an injunction restraining the Chicago Sanitation

2. By "final," we mean all further remedies by way of appeal have been exhausted.

District from discharging sewerage into waters that flowed into the Mississippi River upon which Missouri residents relied for consumption purposes. At 180 U.S. 241, this Court responded as follows:

> It is true that no question of boundary is involved, nor of direct property rights belonging to the complainant State. But it must surely be conceded that, *if the health and comfort of the inhabitants of a State are threatened, the State is the proper party to represent and defend them.* . . . . (Emphasis added)

In the original action of *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907), an action, like Count III of the instant suit, to enjoin a nuisance, this Court recognized that a State retains *quasi* sovereign interests, independent of and beyond the interest of her citizens, which justifies the maintenance of an action to abate the discharge of noxious gases over her territory from operations conducted in an adjoining State. In delivering the Court's opinion, Justice Holmes said at 206 U.S. 237:

> The State owns very little of the territory alleged to be affected, and the damage to it capable of estimate in money, possibly, at least, is small. This is a suit by a State for an injury to it in its capacity of *quasi*-sovereign. In that capacity the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air.

Again at 206 U.S. 238:

> It is a fair and reasonable demand on the part of a sovereign that the air over its territory should not be polluted on a great scale by sulphurous acid gas, that the forests on its mountains, be they better or worse, and whatever domestic destruction they have suffered, should not be further destroyed or threat-

> ened by the act of persons beyond its control, that the crops and orchards on its hills should not be endangered from the same source. If any such demand is to be enforced this must be, notwithstanding the hesitation that we might feel if the suit were between private parties, and the doubt whether for the injuries which they might be suffering to their property they should not be left to an action at law.

The Court also noted that the evidence showed that the State of Georgia had made out a case within the *parens patriae* requirements of *Missouri v. Illinois & Chicago District, supra.*

In a more recent original action, *Georgia v. Pennsylvania R. Co., supra,* this Court held that its original jurisdiction could be invoked by a State suing citizens of another State in either her *parens patriae* or *quasi* sovereign capacity.

In that case the State of Georgia brought an original action under the Clayton Act for injunctive relief and damages against twenty railroads alleged to have conspired in fixing freight rates that discriminated against Georgia. The action was brought in four capacities by the State.

1. *Parens patriae* for the citizens of Georgia;
2. *Quasi* sovereign;
3. Proprietary;
4. As a "person" entitled to sue for injunctive relief under §16 of the Clayton Act.

This Court held that Georgia was entitled to maintain the action in all four capacities. In passing upon the question of whether civil remedies under the antitrust laws

could be sought by Georgia in its *parens patriae* capacity, it was said at 324 U.S. 447:

> The enforcement of the criminal sanctions of these acts has been entrusted exclusively to the federal government. See *Georgia v. Evans, supra,* [316 U.S. 159], p. 162. But when it came to other sanctions Congress followed a different course and authorized civil suits not only by the United States but by other persons as well. And we find no indication that, when Congress fashioned those civil remedies, it restricted the States to suits to protect their proprietary interests. Suits by a State, *parens patriae,* have long been recognized. *There is no apparent reason why those suits should be excluded from the purview of the anti-trust acts.* (Emphasis added)

And at 324 U.S. 450:

> It seems to us clear that under the authority of these cases Georgia may maintain this suit as *parens patriae* acting on behalf of her citizens . . . .

In *Georgia v. Pennsylvania R. Co., supra,* this Court treated the "*quasi*-sovereign" interests of a State as, similar to, if not synonymous with the interests of a State as *parens patriae* of her citizens' welfare, and distinguished those kinds of interests from the proprietary interests of a State which might justify an action solely on the basis of injury to State property or institutions. In the *Pennsylvania R. Co.* case, this Court held that Georgia's action was properly maintainable in either capacity under the original jurisdiction of this Court for civil relief under the federal antitrust laws.

In all three capacities in which they sue, it is clear that Plaintiff States are the proper parties to bring this action, and that they are the real parties in interest. This is not an action like *Oklahoma v. Cook,* 304 U.S. 387 (1938), where

the Plaintiff States are seeking to invoke the original jurisdiction of this Court primarily for the benefit of particular individuals. The relief requested in this action can only be obtained in an action of this type, and is sought for the benefit of all citizens of the several Plaintiff States. In this respect, the present case is similar to *Missouri v. Illinois & Chicago District, supra,* wherein this Court responded to the argument that private citizens were the proper parties to seek relief from pollution of the Mississippi River, by stating at 180 U.S. 241:

> That suits brought by individuals, each for personal injuries, threatened or received, would be wholly inadequate and disproportionate remedies, requires no argument.

The same argument was rejected in *Georgia v. Pennsylvania R. Co., supra,* at page 452:

> This is not a suit in which a State is a mere nominal plaintiff, individual shippers being the real complainants. This is a suit in which Georgia asserts claims arising out of federal laws and the gravamen of which runs far beyond the claim of damage to individual shippers.

II.

The Original Jurisdiction of This Court Should Be Exercised in This Case

> The original jurisdiction of this Court is one of the mighty instruments which the framers of the Constitution provided so that adequate machinery might be available for the peaceful settlement of disputes . . . between a State and citizens of another State. *Georgia v. Penn. R. Co.,* 324 U.S. at 450.

The original jurisdiction of this Court in this case is based on Article III, §2 of the United States Constitution and 28 U.S.C. §1251(b).

The complaint presents a justiciable controversy that is not of a political or governmental character. Cf. *Massachusetts v. Mellon*, 262 U.S. 447 (1923), and is, in any event, justiciable as a suit by States against citizens of another State, *Georgia v. Tennessee Copper Co.*, *supra*. Likewise, this action does not involve enforcement of the penal statutes of a State, *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265 (1888), nor seek to protect State citizens from the operation of federal laws. *Florida v. Mellon*, 273 U.S. 12 (1927).

Since this is an action by States against citizens of other States, the original jurisdiction of this Court is not exclusive. *Georgia v. Pennsylvania R. Co.*, 324 U.S. at 464.

This Court should, however, exercise its original jurisdiction in this case upon a showing by plaintiffs that there is not "another suitable forum to which the cause may be remitted in the interests of convenience, efficiency and justice." 324 U.S. at 464-65.

III.

There Is No Other Suitable Forum in the Interests of Convenience, Efficiency and Justice

In *Georgia v. Pennsylvania R. Co.*, *supra*, *this* Court said at 464:

> The Court in its discretion has withheld the exercise of its jurisdiction where there has been no want of another suitable forum to which the cause may be remitted in the interests of convenience, efficiency, and justice.

There are three decisive factors in this case which make this forum the most convenient forum, the most efficient forum, and the forum most able to do justice in the interests of both Plaintiff States and the defendants in resolving the

unprecedented questions presented by this suit.

1. Only this forum can provide a single unified trial of the issues relating to the conspiracies (Counts I and II) and the public nuisance (Count III) alleged, resulting if successful in uniform nationwide injunctive relief.

2. This forum can provide the most expeditious final determination of the questions of fact presented and the appropriateness of the injunctive relief sought, a final determination which if delayed even by the normal appellate processes may become at worst moot, and at best more costly, both to the public and to the defendants.

3. No other federal forum has jurisdiction over Count III since a State is not a citizen for diversity purposes, and Count III does not present a federal question.

A. *The Injunctive Relief Sought by Plaintiff States Is the Most Adequate and May Be the Only Remedy for the Loss and Damage Done to Plaintiff States by the Wrongs Alleged.*

The crux of the relief sought by the Plaintiff States is set forth in the following paragraphs of the Prayer for Relief:

"2. That a mandatory injunction be issued by this Court requiring the defendants and each of them to adopt and pursue an accelerated program of spending, research and development designed to produce a fully effective pollution control device or devices and/or a pollution free engine at the earliest feasible date as shown by the evidence, specifically, if applicable on the evidence, that date by which such device or devices or such pollution free engine would have been developed but for the conspiracy alleged herein;

"3. That a mandatory injunction be issued by this Court requiring the defendants to cause to be installed, at defendants' expense, as standard equipment in all new motor vehicles sold, or delivered in the United States such effective anti-pollution control devices as could have been installed in said motor vehicles but for the conspiracy alleged herein;

"4. That a mandatory injunction be issued by this Court requiring the defendants to cause to be installed, at defendants' expense such effective anti-pollution control devices as the Court deems reasonable and proper, on all motor vehicles owned or possessed by anyone in the United States, manufactured by the defendants during or following the period of the conspiracy alleged herein."

If Plaintiff States can prove the facts alleged in their complaint, they have a right to the relief requested under each of the three counts of their complaint.

1. Right to relief under Count I

The prayer for relief under Count I, the Sherman Act Count, is sought pursuant to Section 16 of the Clayton Act, 15 U.S.C. §26 which states in part:

> Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings . . . .

Plaintiff States allege loss and damage, which is not only threatened but which is in fact presently occurring as a

result of the wrongful acts of the defendants alleged in the complaint. It is plain from the statutory language of Section 16 of the Clayton Act that injunctive relief is available against "threatened loss or damage" resulting from conduct in violation of the antitrust laws, without regard to whether or not the active conduct is still continuing. If Congress had intended to limit injunctive relief to threatened *conduct,* it would have used words to the effect of "threatened loss or damage by a *threatened* violation of the antitrust laws." By specifically stating that injunctions are available on the same equitable principles *as* injunctions against threatened conduct, and by omitting any language such as that suggested here, the meaning is plain—the principles for issuing injunctions are those principles for issuing injunctions against threatened conduct, but Section 16 injunctions are available to remedy more than threatened conduct, and threatened conduct is not a necessary prerequisite to Section 16 injunctive relief.

While no interpretative principle is necessary to reach this conclusion, it is fortified by this Court's analysis in *Zenith Radio Corp. v. Hazeltine Research, Inc.,* 395 U.S. 100, 130-31, (1969), that, in addition to affording private relief, Clayton Act, Section 16, was designed to serve "the high purpose of enforcing the antitrust laws." This court said:

> Section 16 should be construed and applied with this purpose in mind, and with the knowledge that the remedy it affords, like other equitable remedies, is flexible and capable of nice "adjustment and reconciliation between the public interest and private needs as well as between competing private claims." *Hecht Co. v. Bowles,* 321 U.S. 321, 329-330, 64 S. Ct. 587, 592, 88 L.Ed. 754 (1944). Its availability

should be "conditioned by the necessities of the public interest which Congress has sought to protect." *Id.*, at 330, 64 S. Ct., at 592.

The principles upon which injunctions are granted by courts of equity "against threatened conduct that will cause loss or damage," are essentially the traditional equitable principles of (1) difficulty in ascertaining damages, (2) multiplicity of suits and (3) absence of realistic damage relief. See generally, Note, *Developments in the Law—Injunctions*, 78 HARV. L. REV. 994, 1001-04 (1965). Countervailing principles include circumvention of a jury trial, *Beacon Theatres v. Westover*, 359 U.S. 500 (1959), impositions imposed on individual freedoms, *Near v. Minnesota*, 283 U.S. 697 (1931), and difficulties in enforcing a decree, *United States v. Paramount Pictures*, 334 U.S. 131, 161-66 (1948).

2. Right to relief under Count II

Plaintiff States alleging a common law conspiracy seek the same relief under Count II, as is sought under Count I. Without admitting that any limitations or restrictions are imposed on the general equity powers of a court by Section 16 of the Clayton Act, if this Court nevertheless concludes that there are such limitations under Section 16 of the Clayton Act, this Court may invoke its general equity powers and grant such relief upon proof of the common law conspiracy alleged.

Since the Clayton Act, Section 16, does not expressly limit the equitable powers of the federal courts, it must be assumed that the full grant of those powers by United States Constitution, Article III, §2 is reserved. Cf. *Mitchell v. DeMario Jewelry*, 361 U.S. 288, 291-92 (1960);

Reich v. Webb, 366 F.2d 153, 158-59 (9th Cir. 1964). Plaintiffs may thus invoke this Court's general equity powers independent of Clayton Act, Section 16. See generally, *Guiterman v. Pennsylvania R. Co.*, 48 F.2d 851 (E. D. N.Y. 1931); *DeKoven v. Lake Shore & M. S. Ry. Co.*, 216 Fed. 955 (S.D.N.Y. 1914).

3. Right to relief under Count III

In respect to Count III, as in respect to Count II, Plaintiff States invoke the general equity powers of this Court to shape and frame decrees which will afford adequate and complete relief. The power which Plaintiffs ask this Court to exercise under Count III is the same power employed in *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907), where this Court accepted jurisdiction of an original action by Georgia to abate an air pollution nuisance caused by a citizen of another state. As Justice Holmes said in that decision:

> [The state of Georgia] has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air. 206 U.S. at 237.

In its *quasi*-sovereign capacity, the Court stated that Georgia had a right to maintain an action on behalf of its citizens to protect the earth and air within its boundaries. On the question of jurisdiction, this Court said at 206 U.S. 237:

> When the States by their union made the forcible abatement of outside nuisances impossible to each, they did not thereby agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground of their still remaining *quasi*-sovereign interests; *and the alternative to force is a suit in this court.* (Emphasis added)

The Court went on to explain that it was guided by the

same equitable principles as in an action between private parties. Justices Holmes and Harlan debated the extent of that equitable power in an original action where a state was plaintiff, but the injunction was issued, all justices concurred in that issuance, and there was no dispute that this Court had the authority to do so. Under Count III, Plaintiffs ask no more than this.

This is the only Federal Court which can adjudicate Count III. A suit between a state and citizens of another state does not involve diversity of citizenship, because a state is not a citizen for diversity purpose. *Arctic Maid v. Territory of Alaska,* 297 F.2d 28 (9th Cir. 1961); *Krisel v. Duran,* 386 F.2d 179 (2d Cir. 1967), *cert. denied,* 390 U.S. 1042 (1968). Since Count III does not involve a federal question for purposes of giving jurisdiction to any federal district court, the only federal forum available for Count III is this Court under its original jurisdiction.

The equitable and possibly the only adequate relief which Plaintiff States seek herein is the most adequate remedy by which a court can redress the damage and loss inflicted upon the health, welfare and safety of the citizens of the Plaintiff States, and the natural resource of air over which the Plaintiff States exercise dominion.

In view of the considerable difficulty involved in measuring and computing the damage done to the health and safety of the citizens of Plaintiff States, on behalf of whom these States sue as *parens patriae,* and the difficulty of translating such damage into monetary terms, the equitable relief sought by the Plaintiff States in this case is more adequate, more appropriate, and more just (at least at this stage of the proceedings) than monetary damages.

As stated, the Plaintiff States bring this action not as "mere volunteers attempting to vindicate the freedom of interstate commerce or to redress purely private grievances," but as representatives of the public in respect to "a matter of grave public concern in which the State, *as the representative of the public*, has an interest apart from that of the individuals affected." (Emphasis added) *Pennsylvania v. West Virginia*, 262 U.S. 553 at 591-92 (1923).

In January 1969, the United States filed a civil action under the Sherman Act against the principal defendants named in the present action, based upon generally the same facts and allegations contained in Count I of the complaint of these Plaintiff States.

In September 1969, the Department of Justice filed a proposed consent decree[3] in its action, signed by the defendants, which decree was approved by the District Court Judge. The consent decree did not constitute an admission by any defendant of violating the Sherman Act—its principal effect was to restrain the defendants from conspiring to delay the development and installation of pollution control devices for automobiles, if such a conspiracy had ever existed.

That the federal antitrust action was settled by consent decree in no way diminishes or abridges the duty of the Plaintiff States in the interest of their citizens and their sovereignties to pursue the relief sought in this complaint. Moreover, the consent decree itself is in no way inconsistent with the relief sought by this action.

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3. A copy of the consent decree entered in the Department of Justice action is attached to this brief as Appendix A.

United States Attorney General John N. Mitchell announced when the consent decree was proposed, that a continuation of the Government's suit (a) might take 10 years of litigation, and (b) would have delayed the Justice Department's efforts to end the alleged conspiracy and its efforts to encourage immediate action by the automobile companies. *BNA Anti-Trust and Trade Regulation Report* No. 427 at A-11, Sept. 16, 1969. It is clear from the consent decree and from the Attorney General's explanation of that decree that the Department of Justice concluded that the most important thing for it to accomplish was an agreement with the individual defendants, that each of them would proceed competively and on its own to develop effective pollution control devices by consenting, without admitting to it, not to agree to develop such devices, if at all, in concert. Such an agreement with the defendants was obviously the first order of business in the public interest and it was accomplished by the U.S. Government expeditiously by consent decree, without a long trial.

That having been accomplished, however, it does not follow that the loss or damage, threatened, caused and continuing to be caused by the defendants' conspiracy, has been abated, or that a fully adequate remedy has been provided. The Plaintiff States through their own action herein, seek injunctive equitable relief which will extend the initial beneficial results obtained by the consent decree to the second order of business, namely, the elimination insofar as possible of the damage which continues to be done to the Plaintiff States by the actions of the defendants alleged in the complaint.

B. *This Is the Only Forum Which Can Provide a Single Unified Trial, With a Nationwide Injunction.*

The conspiracy alleged by the complaint herein is one which has nationwide effect. If the fifteen Plaintiff States were to bring fifteen separate actions, each in their own district, as several other States and a multiplicity of municipalities and individuals have already done, these cases would be consolidated for discovery and pretrial proceedings under 28 U.S.C. §1407. However, that statute expressly provides "each action so transferred *shall* be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred, unless it shall have been previously terminated." 28 U.S.C. §1407 (Emphasis added)

Yet, the very nature of this case brought by fifteen separate and sovereign States alleging one conspiracy, and seeking one nationwide injunction, strongly suggests that the only efficient way to handle this matter, in the interests of the entire judicial system, is by one trial.

To begin with, under present statutes and rules, there is no existing mechanism other than the exercise of this Court of its original jurisdiction, to provide a single unified trial of this case. Even if there were such a mechanism, this case brought by fifteen States is uniquely suited to the original jurisdiction of this Court. Lest this Court be concerned that by exercising original jurisdiction in this case it will be opening the door to a flood of similar multi-state cases, it is difficult to visualize cases likely to be similar to this action. First of all, this case concerns the automobile. There is little in this country as mobile, as national, as the car. It is not by coincidence that the automobile was at the vanguard of the expansion of personal

jurisdiction of state courts through what ultimately developed into the passage of long arm jurisdiction statutes. See *Hess v. Pawloski*, 274 U.S. 352 (1927). Secondly, it is doubtful that many cases can be visualized in which the need for speed in reaching a final adjudication is as crucial as in the instant case, to preserve the only adequate remedy which may be available. Third, if there are a number of similar potential cases in the offing in the future, then Congress can certainly fashion another judicial mechanism for handling such cases, in order to spare this Court the exercise of its original jurisdiction. The point is that as of now no such mechanism exists, or prior hereto has been needed.

Lest there be any doubt that Plaintiff States' argument in favor of a unified trial is merely a theoretical one, defendants have made it clear in the multi-district private civil damage antitrust litigation involving motor vehicle air pollution control equipment, Docket No. 31, that this case will not be settled; or to quote a barrister who practiced in another jurisdiction, and in a less complicated time, "This trial must be tried." Statements by defendants' counsel to that effect are set forth in Appendix B of this brief.

C. *Time Is Essential to the Relief Sought.*

Plaintiff States have previously shown that the multi-district mechanism established by Congress cannot furnish the single trial appropriate to this case in the interests of convenience, efficiency and justice. Equally so, it cannot furnish final adjudication of the injunctive relief sought as expeditiously as can the original jurisdiction of this Court.

As the multi-district panel itself has recognized, in consolidating the actions commenced by States, cities and individuals following the consent decree entered in the Government's case, "this litigation could quickly become the largest and most complicated multi-district litigation commenced since this Panel was established less than two years ago." *Opinion*, Multi-District Docket No. 31, April 6, 1970, page 3, attached hereto as Appendix C. It is apparent that this litigation—as a multi-district case making its way through the lower federal courts—would go on for years. A survey of cases selected at random in the Ninth Circuit over the last three years indicates that on the average between 18 months and 2 years is consumed following the final judgment at the district court level, until the case is finally adjudicated, assuming, which might not be the case here, that *certiorari* is denied by this Court.

Conversely, the need for a speedy remedy is equally apparent. On or about March 20, 1970 the U.S. Department of Health, Education and Welfare, Public Health Service, gave a detailed report to the U.S. Senate Air and Water Pollution Subcommittee on the effects of air pollution caused by automobile exhaust emissions. This report stated that 67.3 million tons of carbon monoxide are released into the atmosphere every year from automobile exhausts, and that this amount is increasing. It said that carbon monoxide levels have reached 115 ppm (parts per million) in downtown urban areas, 75 ppm on expressways, and 87 ppm in underground garages, tunnels and overpass buildings. According to the Public Health Service, concentrations of 10-15 ppm of carbon monoxide have been associated with adverse health effects.

In another report issued by the Public Health Service in

1969 entitled "Determining Air Pollutant Emissions from Transportation Systems," the following table is shown on page 2:

PERCENT OF NATIONWIDE EMISSIONS OF FIVE MAJOR POLLUTANTS PRODUCED BY MOTOR VEHICLES

Pollutants	*Total national emissions (millions of tons)*	*Motor vehicle emissions (millions of tons)*	*Percent of total emissions*
Carbon monoxide	86.8	67.3	77.5
Hydrocarbons	23.7	12.7	53.6
Nitrogen oxides	15.8	7.0	44.3
Particulates	14.8	0.7	4.7
Sulfur oxides	30.4	0.3	1.0

The increase in pollutant emissions by motor vehicles and the percentage of total emissions attributable to automobiles have likewise been reported by governmental and private scientists.

The serious air pollution now resulting from automobile emissions, with its consequent effect upon the health and welfare of American citizens, complicated by the addition of more automobiles and increased pollution into the atmosphere of the Plaintiff States and the rest of the nation, compels that a speedy remedy be provided for this dangerous, and even deadly, problem.

D. *In Exercise of Its Original Jurisdiction, This Court Has Broad Powers to Expedite and Simplify the Action and to Coordinate Discovery With the Multidistrict Cases Now Pending.*

Pursuant to U.S. Supreme Court Rule 9, this Court may

avail itself of the procedures described in Federal Rules of Civil Procedure, Rule 53, relating to the appointment of a master. There is nothing in the rules to prevent the Supreme Court from appointing more than one master—for example, it might appoint one master to supervise and handle all discovery and pretrial proceedings, but appoint a second master to handle the trial of the factual issues. In that respect, this Court would have power to appoint Judge Manuel L. Real, the United States Judge of the Federal District of California, to whom the multi-district private civil treble damage antitrust litigation involving air pollution control equipment was assigned by the Panel on multi-district litigation, as master in this case in respect to all pre-trial and discovery proceedings. Such an appointment would be one way in which this Court, while exercising its original jurisdiction in this case could assure the coordination of this action with the multi-district actions during the discovery phase. Such an appointment would at the same time not inhibit the expeditious handling of the final adjudication which the Plaintiff States seek, since the trial of the factual issues, whether conducted by Judge Real as a master or by some other master appointed by this Court, could proceed at the conclusion of discovery and be finally determined by this Court while the multi-district actions were returned to the districts in which they were filed for separate trials and separate appeals through the normal federal appellate procedures.

Plaintiff States do not suggest that the above-described course is the only or the best means of proceeding, but simply that it is one way of coordinating this proceeding

with the presently pending multi-district proceedings. Such an approach is consistent with the principle that in the exercise of its original jurisdiction the Supreme Court may regulate and mold the process it uses in such manner as in its judgment will best promote the purposes of justice. *Kentucky v. Dennison,* 65 U.S. (24 How.) 66 (1861).

E. *Defendants Should Join With Plaintiffs in Urging This Court to Exercise Original Jurisdiction.*

Plaintiff States believe that it is in the best interest of the defendants, as well as of the Plaintiff States and their citizens, that there be one trial of the factual issues of liability, and a speedy final adjudication of the equitable relief sought in this action.

Surely, a number of separate trials in diverse judicial districts in the United States with each district court shaping the equitable relief granted to the particular facts shown in the case tried by him, would be as confusing, as expensive, and as wasteful to the defendants as it would be to the public in general. Furthermore, if the evidence justifies the equitable relief sought by Plaintiff States, and if a court orders the defendants, or any of them, to undertake an accelerated program to produce effective pollution control devices, then the sooner the defendants know that they must follow such a program, the easier it will be for them. The defendants may well contend that the relief sought by Plaintiff States is totally inappropriate. As shown above, however, that determination cannot be finally made until the facts which might justify such relief

have been marshalled and presented to the Court. Assuming that this can be done, and that relief of the type sought by Plaintiff States will be granted, then the sooner defendants know what they must do, the better off they will be.

CONCLUSION

Under Article III, Section 2 of the United States Constitution and under 28 U.S.C. §1251(b)(3), this Court has original jurisdiction of this suit. It should exercise that jurisdiction under the guidelines enunciated in *Georgia v. Pennsylvania R. Co., supra,* for the reason that there is no alternative forum suitable for the trial of this action in the interests of efficiency, convenience and justice. This Court has the power to establish rules and to preside over this case in a way which will shorten the length of these proceedings by at least two years. It can provide in the interest of all the parties and the public one trial with one result, as contrasted with a number of trials, quite possibly producing varying results In respect to Count III, this Court is the only federal forum available to these Plaintiffs. This Court can, if Plaintiffs prevail, issue one injunction with nationwide effect.

This suit seeking nationwide equitable relief brought by 15 sovereign states representing more than 30% of the population of the entire nation is precisely the type of legal action which calls for the use of that mighty instrument provided by the framers of the Constitution for the peaceful settlement of disputes between states and citizens

of another state. This Court should exercise its original jurisdiction in this case.

Respectfully submitted,

Dated August 5, 1970

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APPENDIX A

Consent Decree

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

AUTOMOBILE MANUFACTURERS ASSOCIATION, INC.;
GENERAL MOTORS CORPORATION;
FORD MOTOR COMPANY;
CHRYSLER CORPORATION; and
AMERCIAN MOTORS CORPORATION,
Defendants.

CURTIS, J.: The plaintiff, United States of America, having filed its complaint herein on January 10, 1969, and the plaintiff and the defendants by their respective attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of or finding on any issues of fact or law herein and without this Final Judgment constituting evidence or an admission by any of them in respect to any such issue:

NOW, THEREFORE, before any testimony has been taken and without trial or adjudication of or finding on any issue of fact or law herein, and upon consent of the parties as aforesaid, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section 1 of the Act of Congress of July 2, 1890,

entitled "An act to protect trade and commerce against unlawful restraints and monopolies, "commonly known as the Sherman Antitrust Act, as amended.

II.

As used in this Final Judgment:

(A) "Devices" means air pollution emission control designs, devices, equipment, methods, or parts thereof, for motor vehicles.

(B) "Restricted information" means all unpublished information of the type usually classified as company confidential concerning applied as distinguished from basic research in, or concerning the development, innovation, manufacture, use, sale or installation of Devices. It includes trade secrets, unpublished company policy, and other unpublished technical information for developing, making, improving, or lowering the cost of, Devices by a motor vehicle manufacturer. "Restricted information" shall not mean (i) information concerning basic research in gaining a fuller knowledge or understanding of the presence, nature, amount, causes, sources, effects or theories of control of motor vehicle emissions in the atmosphere, or (ii) information relating primarily to equipment, methods or procedures for the testing or measurement of Devices, or (iii) information for or resulting from the testing or measurement of production prototypes of Devices of an advanced stage exchanged solely for such purposes. Information shall be deemed to be published when it is disclosed without restriction to the public, or to media of general circulation, or to the trade press, or to meetings of stockholders, dealers, or financial analysts, or to meetings of professional, scientific or engineering societies,

or committees thereof, the membership of which is not limited to persons employed by defendants or by motor vehicle manufacturers, or to meetings called by representatives of Federal, state or local governments or agencies authorized to issue motor vehicle emission control regulations.

III.

The provisions of this Final Judgment shall be binding upon each defendant and upon each of its subsidiaries, officers, directors, agents, servants, employees, successors and assigns, and upon all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise, but shall not apply to any transaction between or among a parent company, its subsidiaries, officers, directors, agents, servants and/or employees. Nothing in this Final Judgment shall have any effect with respect to any activities outside the United States which do not adversely and substantially affect the foreign commerce of the United States.

IV.

(A) Each defendant is enjoined and restrained from:

(1) Combining or conspiring to prevent, restrain or limit the development, manufacture, installation, distribution or sale of Devices;

(2) Entering into, adhering to, enforcing or claiming any rights under any provisions of any agreement, arrangement, understanding, plan or program (hereinafter "agreement") with any other defendant or manufacturer of motor vehicles or Devices:

(a) to exchange restricted information;

(b) to cross-license patents or patent rights on Devices which cross-license includes patents or patent rights acquired subsequent to the date of any such-cross-license;

(c) to delay installation of Devices or otherwise restrain individual decisions as to installation dates;

(d) to restrict publicity of research and development relating to Devices;

(e) to employ joint assessment of the value of patents or patent rights of any third party relating to Devices;

(f) to require that acquisition of patent rights relating to Devices be conditioned upon availability of such rights to others upon a most-favored-purchaser basis;

(g) to file, in the absence of a written authorization for a joint statement by the agency involved, with any governmental regulatory agency in the United States authorized to issue emission standards or regulations for new motor vehicles or Federal motor vehicle safety standards or regulations, any joint statement regarding such standards or regulations except joint statements relating to (i) the authority of the agency involved, (ii) the draftsmanship of or the scientific need for standards or regulations, (iii) test procedures or test data relevant to standards or regulations, or (iv) the general engineering requirements of standards or regulations based upon publicly available information; provided that no joint statement shall be filed which discusses the ability of one or more defendants to comply with a particular standard or regulation or to do so by a particular time, in the absence of a written agency authorization for such a joint statement, and provided also that any defendant joining in a joint statement shall also

file a statement individually upon written request by the agency involved; or

(h) not to file individual statements with any governmental regulatory agency in the United States authorized to issue emission standards or regulations for new motor vehicles or Federal motor vehicle safety standards or regulations.

(B) Nothing in this Final Judgment shall prohibit any defendant:

(1) from furnishing or acquiring any restricted information for the defense or prosecution of any litigation or claim;

(2) from entering into or performing under any otherwise lawful agreement with any other person or conducting *bona fide* negotiations looking to any such agreement:

(a) for the purchase or sale of specific commercial products;

(b) for the license of specific existing patent rights or from including in any such agreement provision for a non-exclusive grant-back of patent rights on improvements obtained by the licensee during the term of the license or a reasonable period thereafter; or

(c) for the purchase, sale or license of specific existing restricted information or specific engineering services relating to Devices or from including in any such agreement provision for a nonexclusive grant-back of patent rights on improvements obtained by the licensee during the term of the license or a reasonable period thereafter; or from furnishing or acquiring any restricted information directly relating thereto;

(3) from entering into, renewing or performing under any otherwise lawful agreement with any nondefendant person, firm or corporation that does not account for more than 2% of world production of motor vehicle passenger car, truck and bus units in the calendar year preceding the entering into or renewing such agreement (See Appendix A) [Appendix omitted]; or

(4) from entering into, renewing or performing under any agreement which is submitted in writing to the plaintiff and to which plaintiff consents in writing.

(C) Nothing in Section IV (A) (2) (a) shall prohibit any defendant from engaging in any activity outside the United States reasonably necessary:

(1) to the development of, response to, or compliance with existing or proposed vehicle emission laws, regulations or standards of a foreign governmental body, or

(2) to the performance under any otherwise lawful agreement for the production of motor vehicles outside the United States with any person, firm or corporation not engaged in the production of motor vehicles in the United States at the time of entering into or renewing such agreement.

V.

(A) Each manufacturing defendant is ordered and directed to exercise its right to withdraw from the AMA cross-licensing agreement of July 1, 1955, as amended, and to take such steps as are necessary to accomplish said withdrawal within one hundred twenty (120) days from the date of entry of this Final Judgment. Notwithstanding such withdrawal defendants may continue to exercise those

rights and claims relating to royalty-free licenses under the cross-licensing agreement which have accrued up to the date of entry of this Final Judgment.

(B) Defendant AMA is ordered and directed to relinquish its responsibilities under the AMA cross-licensing agreement of July 1, 1955, as amended, within sixty (60) days from the date of entry of this Final Judgment.

VI.

(A) Upon written request therefor and subject to the conditions set forth herein:

(1) Each manufacturing defendant is ordered and directed to grant to any person to the extent that it has the power to do so a nonexclusive, nontransferable and royalty-free license to make, have made, use, lease or sell Devices under any claim of any United States patent or any United States patent application owned or controlled by said defendant or under which it has sublicensing rights, which patent was issued or application was filed prior to the date of entry of this Final Judgment and licensed under the AMA cross-licensing agreement of July 1, 1955, as amended, provided that if the manufacturing defendant is obligated to pay royalties to another on the sales of the licensee the license under this paragraph may provide for the payment of those same royalties to the defendant;

(2) Each manufacturing defendant shall grant to any licensee under (1) above, to the extent that it has the power to do so, an immunity from suit under any foreign counterpart patent or patent application for any product manufactured in the United States under the license for sale abroad or for any product manufactured abroad and

sold in the United States, provided that if the manufacturing defendant is obligated to pay royalties to another on the sales of the licensee the license may provide for the payment of those same royalties to the defendant; and

(3) Defendant AMA is ordered and directed to make available for examination and copying by any person the technical reports in its possession or control prepared or exchanged by defendants pursuant to said cross-license within two years prior to the entry of this Final Judgment, which are identified in Appendix B [Appendix omitted]; provided that such person agrees to offer each signatory party to the AMA cross-licensing agreement of July 1, 1955, as amended, and any subsidiary thereof a nonexclusive license for a reasonable royalty and upon reasonable terms with respect to any patent or patent application, domestic or foreign, thereafter obtained or filed by such person or under which licensing rights are obtained by such person which is based upon or employs Devices licensed or about which information is supplied pursuant to such license or otherwise under this Section VI(A).

(B) Any existing licensee of any manufacturing defendant shall have the right to apply for and receive a license or licenses under this Final Judgment in substitution for its existing license or licenses from any manufacturing defendant, insofar as future obligations and licenses are concerned. Any licensee shall be free to contest the validity and scope of any licensed patent.

VII.

Defendant AMA is ordered and directed to mail a copy of this Final Judgment to all signatories to the AMA cross-licensing agreement of July 1, 1955, as amended, and to

all known domestic manufacturers of motor vehicles and motor vehicle engines within thirty (30) days from the date of entry of this Final Judgment, and to issue a press release to the domestic trade and business press relating the substance of the Final Judgment.

VIII.

For the purpose of determining or securing compliance with this Final Judgment, duly-authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege, access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment, and subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters. Said defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be requested. No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings to which

the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

IX.

Section IV(A) (2) (a) and (g) of this Final Judgment shall expire ten years after the date of entry hereof, provided that plaintiff may apply to this Court for the continuation of one or both of said provisions, such application to be made not later than nine years after the date of entry of this Final Judgment.

X.

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate in relating to the construction of or carrying out of this Final Judgment, for the modification or vacating of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

APPENDIX B

Excerpts From Transcript

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE MANUEL L. REAL, *Judge Presiding*

IN RE: MULTIDISTRICT PRIVATE CIVIL TREBLE DAMAGE ANTI-TRUST LITIGATION INVOLVING MOTOR VEHICLE AIR POLLUTION CONTROL EQUIPMENT. } Docket No. 31

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Place: Los Angeles, California
Date: Monday, April 27, 1970

MR. CHAFFETZ: Hammond E. Chaffetz representing General Motors.

It is true that the defendants, or some of them, conceded to an order in the Government's case but that was for a different purpose than the purpose of admitting any violation of law. The real purpose there was to terminate the Government litigation which had been filed and get on with the job, free their experts from involvement in litigation and get on with the job of solving the very difficult problems in which there is so much public interest today.

But this is a different matter now. Here we have cases purportedly filed on behalf of all members of the public. The defendants have no choice here. Despite the inconvenience, despite the expense, despite involvement of their

technical people in this very extensive litigation, they have no alternative but to vindicate themselves.

The reason I bring that up is in connection with the pretrial proceedings it is important for us all to know that these cases are going to the ultimate conclusion (Tr. pp. 36-37).

MR. VERLEGER: Your Honor, Philip Verleger for the defendant Chrysler Corporation.

Now, while I am here I would like to add my words to Mr. Chaffetz's observations concerning the overall merits of this case and the position at least of my particular client.

So far as we are concerned, we believe it is a case to be utterly without merit either factually or legally. It will not be compromised. There will be no negotiated settlement. It will not be ended short of the final judicial determination (Tr. pp. 57-58).

APPENDIX C

The Judicial Panel On Multidistrict Litigation

MULTIDISTRICT PRIVATE CIVIL TREBLE DAMAGE ANTITRUST LITIGATION INVOLVING MOTOR VEHICLE AIR POLLUTION CONTROL EQUIPMENT. } Docket No. 31

Before ALFRED P. MURRAH, *Chairman*, and JOHN MINOR WISDOM, EDWARD WEINFELD*, EDWIN A. ROBSON, WILLIAM H. BECKER, JOSEPH S. LORD, III and STANLEY A. WEIGEL, *Judges of the Panel*

Per curiam:

Transfer of the actions listed on Schedule A to a single district for coordinated or consolidated pretrial proceedings has been considered by the Panel on its own initiative. An order to show cause was entered on December 16, 1969 and a hearing was held in Washington, D.C. on January 23, 1970. The parties generally agreed that transfer under Section 1407 was necessary[1] but disagreed as to what would be the most appropriate transferee forum and as to the proper "timing" for the transfer. Counsel for certain plaintiffs argued that it would be best to defer further consideration for approximately sixty days to await the outcome of appeals to the United States Supreme Court from orders of the United States District Court for

* Although Judge Weinfeld did not attend the hearing he has, with the consent of all parties participated in this decision.

1. The American Petroleum Institute and nineteen individual oil companies, defendants in the *Handy case* (C.D. Calif.), opposed transfer of that action to any other district. That action has since been dismissed as to these defendants and they are no longer parties in any of these actions.

the Central District of California denying intervention in the *government suit*.[2] This matter was therefore continued for approximately sixty days and was reset for hearing in San Francisco on March 20, 1970.[3]

We think this sixty day stay was helpful for the status and scope of this multidistrict litigation are much clearer now. The oil companies, defendants in only one action, were eliminated by voluntary dismissal and the appeals to the United States Supreme Court have been resolved. Several new actions were filed during this period and while many more can be expected, those now before us are representative ones with respect to parties, claims and geographical distribution.

All parties now favor immediate transfer to a single district so that pretrial proceedings can commence without

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2. On January 10, 1969, the United States brought an antitrust enforcement action against the Automobile Manufacturers Association and the "Big Four" of the automotive industry. The defendants and the co-conspirators (which included the remaining domestic manufacturers of motor vehicles) were charged with having been engaged since 1953 in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in motor vehicle air pollution control equipment by having agreed to "eliminate all competition among themselves in the research, development, manufacture and installation of motor vehicle air pollution control equipment; and to eliminate competition in the purchase of patents and patent rights covering motor vehicle air pollution control equipment."

On October 29, 1969 a *consent decree* was entered prohibiting the defendants, *inter alia*, from combining or conspiring to prevent, restrain or limit the development, manufacture, installation, distribution or sale of air pollution control equipment and requiring the defendants to make available to all applicants on a royalty free basis, licenses on air pollution control patents. The City of New York was denied leave to intervene in this action both before and after the approval of the consent judgment and sought to appeal this denial to the United States Supreme Court. The judgment of the district court was summarily affirmed on March 16, 1970. The plaintiffs in the *Grossman case* (C.D. Calif.), attempted to consolidate their suit with the government action and this request was also denied. Their appeal to the United States Supreme Court was dismissed.

3. The hearing was originally scheduled for March 27, 1970 but the order was amended to change the date to March 20, 1970.

duplication or disruption. We need not pause very long to establish the statutory prerequisites for transfer under Section 1407. Although now involving but a small number of individual actions, this litigation could quickly become the largest and most complicated multidistrict litigation commenced since this panel was established less than two years ago. These actions have been brought by cities, states and individuals with class action claims purporting to encompass all residents of the United States. Each complaint alleges a national conspiracy and thus the existence, scope, and effect of the alleged conspiracy are common to all actions. It is manifest that the transfer of all actions to a single district for coordinated or consolidated pretrial proceedings will clearly promote the just and efficient conduct of this litigation and will serve the convenience of all parties and their witnesses.

We turn now to the disputed issue: the selection of a transferee forum. The defendants favor the Eastern District of Michigan or, as a second choice, the Central District of California. Most plaintiffs oppose both of these selections[4] and urge that the actions transferred to a district more convenient to them, either the Southern District of New York, the Eastern District of Pennsylvania, or the Northern District of Illinois.[5]

4. It has also been suggested that the Panel cannot transfer these actions to the Eastern District of Michigan since there are no related actions pending in that district. We think the language of the statute clearly permits transfer to *any district* regardless of whether or not there are any related actions pending in the transferee district.

5. Counsel for the State of Wisconsin urges that all multi-district private antitrust litigation should not be concentrated by the Panel in a few metropolitan centers like New York, Philadelphia, Chicago or San Francisco, but that such litigation should, on occasion, be transferred to a less populous area, preferably to a state capital where the attorney general could act as liaison counsel for the plaintiffs. It may be unfortunate that litigation of this type tends to gravitate to the larger metropolitan areas but we note that many states prefer to commence their actions in these

We think that the Central District of California clearly stands out as the most appropriate transferee forum. It was there that the United States brought its action and the Grand Jury documents which the plaintiffs have sought to use have been impounded by that court. The scope and breadth of the private actions commenced in the Central District of California are at least equivalent to those filed in the Northern District of Illinois or the Eastern District of Pennsylvania. While it is undoubtedly true that many of the witnesses whose deposition testimony will be taken during pretrial proceedings are located in the Detroit area[6] it is also true that many "air pollution experts" reside in the Los Angeles area and it is likely that many of them will also be deposed. It is also alleged that certain conspiratorial activity occured in Los Angeles in connection with meetings between representatives of the auto industry and officials of the State of California and the City and County of Los Angeles with regard to the promulgation and implementation of air pollution control standards. For these and other reasons we believe that the "center of gravity" of this litigation is in the Los Angeles area.

All of the private actions filed in the Central District of California since the entrance of the consent decree have been assigned to Judge Manuel Real. Judge Real is willing to undertake the supervision of pretrial proceedings in this multidistrict litigation and Chief Judge Thurmond

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metropolitan areas rather than in federal courts in their own states. In any event, we do not see how transfer of *these actions* to the Western District of Wisconsin would serve the convenience of the parties and witnesses save the State of Wisconsin.

The State of California vigorously supports the selection of the Central District of California as the transferee court.

6. If extensive deposition testimony is to be taken in the Detroit area, the Panel could designate one of its members or any other circuit or district judge to conduct such depositions pursuant to 28 U.S.C. §1407 (b).

Clarke has consented to the assignment of all related actions to Judge Real.[7]

IT IS THEREFORE ORDERED that the actions listed on Schedule A now pending in other districts be and the same are hereby transferred to the United States District Court for the Central District of California and assigned to Judge Manual Real for coordinated or consolidated pretrial proceedings under 28 U.S.C. §1407.

7. The written consent has been filed with the clerk of the Panel in Washington, D.C.